

ORIGINAL

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EX PARTE OR LATE FILED

March 27, 2012

FILED/ACCEPTED

**Ex Parte Filing**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
12<sup>th</sup> Street Lobby, Room TW-A325  
Washington, D.C. 20554

MAR 27 2012

Federal Communications Commission  
Office of the Secretary

Re: *Toll Free Service Access Codes*, CC Docket No. 95-155

Dear Ms. Dortch:

I write on behalf of SMS/800, Inc., to provide a copy of a presentation made on March 27, 2012, by the Board and Chief Executive Officer of SMS/800, Inc., to the SMS/800 Industry Transition Committee. That presentation is attached hereto as Exhibit A.

One original and two copies of this letter and its attachment are being submitted to you in compliance with 47 C.F.R. § 1.1206(a)(2) to be included in the record of these proceedings. If you have any questions concerning this matter, please contact me at (202) 326-7962.

Sincerely,



Melanie L. Bostwick

Enclosures

cc: Ann Stevens  
Jodie May Donovan  
Michelle Sclater  
Heather Hendrickson  
Joel Rabinovitz

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# **Exhibit A**



# **SMS/800, INC. BOARD COMPOSITION PROPOSAL**

*Transition Committee Call*  
*March 27, 2012*

# Board Composition Proposal

## ***BOC understanding of the key elements of the Transition Committee's proposal:***

- 1 seat elected by large Resp Orgs (defined as Resp Orgs controlling more than the mean number of toll-free numbers)
- 1 seat elected by small Resp Orgs (defined as Resp Orgs controlling fewer than the mean number of toll-free numbers)
- 1 seat elected by the SCP Owner Operators
- 2 seats elected at large by the Resp Orgs and SCP O/Os
- 2 independent seats
- 1 seat for the CEO
- No one company could have more than one representative on the Board
- Board members elected on a staggered term basis
- All Resp Orgs and SCP O/Os in good standing would be eligible to vote
- Elections would be decided on a one member/one vote basis
- All affiliated companies vote as a single member
- Election by plurality of votes cast



# Board Composition Proposal

***The BOCs are prepared to move forward on the Transition Committee proposal with the modifications described in this presentation.***

## ***Summary of proposed modifications:***

- Continue 1 BOC seat for each BOC (currently 3 in number)
- Make the CEO a voting member of the Board
- Substitute the 2 “At-large” seats with 2 more Independent Directors, bringing the Number of Independent Directors on the Board to four.
- No prohibition against a company having more than one representative on the Board
- Establishment of a Nominating Committee that nominates a slate of candidates for the open seats each year.

# Proposal Rationale

***The proposed modifications achieve many objectives:***

- The continued Board representation of the BOCs ensures continued stability of the system;
- The inclusion of 2 additional Independent Directors balances both BOC and industry Board seats and will ensure the continued neutrality of the provision of the services;
- The inclusion of independent directors is also consistent with best practices for good corporate governance.

***For all the foregoing reasons, the proposal maximizes the odds of a successful transition of both tariff responsibility and Board representation.***

# Board Composition Proposal

## ***Modified Board composition (modified items in bold font):***

- 1 seat elected by large Resp Orgs (defined as Resp Orgs controlling more than the mean number of toll-free numbers)
- 1 seat elected by small Resp Orgs (defined as Resp Orgs controlling fewer than the mean number of toll-free numbers)
- 1 seat elected by the SCP Owner Operators
- **4 independent seats**
- 1 seat for the CEO (as a voting member)
- **1 BOC seat for each BOC (currently 3 in number)**
- **No prohibition against a company having more than one representative on the Board**
- **Nominating Committee nominates a slate of candidates for the open seats each year**
- Board members elected on a staggered term basis
- All Resp Orgs and SCP O/Os in good standing would be eligible to vote
- Elections would be decided on a one member/one vote basis
- All affiliated companies vote as a single member
- Election by plurality of votes cast



# Nominating Committee

## ***Nominating Committee Composition:***

- Members of the Nominating Committee will not be eligible for nomination.
- No organization will have more than one representative on the Nominating Committee.
- Initial Nominating Committee:
  - Consist of 1 representative of the current Board, 1 industry representative and the CEO of SMS/800, Inc.
- Future Nominating Committees:
  - Consist of 1 BOC Board member, 1 industry Board Member and the CEO -- or any other combination that Board deems is both manageable and representative.



# Nominating Committee

## ***Nominating Committee Objectives:***

- Committee would accept expressions of interest within a defined period of time prior to each election.
- Committee would also reach out to recruit candidates it wanted to propose on its own motion.
- Criteria for the Nominating Committee in selecting the slate would include:
  - support from employer organization
  - commitment to toll-free industry
  - willingness and ability to devote time to the role
  - capacity for independent judgment in fulfillment of fiduciary obligations of Director role
- In addition to the Nominating Committee's slate, there could be nominations from the membership.

# Independent Directors

## ***Selection:***

- Current Board selects 2 of the Independent Directors and elected Board selects 2 Independent Directors within 6 months of the election.

## ***Criteria:***

- No current or recent affiliation with other industry members or participants;
- Experience in corporate governance;
- Expertise in other areas relevant to the corporation's business including but is not limited to: financial, IT/ technology, start-up/ emerging company development and general telecommunications.

## ***Recruitment:***

- As is customary with searches of this type, the Board tasked with selecting the Independent Directors will utilize a recruiter with the required expertise to aid in the search and selection process.

## Timing and Next Steps

- **Finalize the modified proposal over the next few days/weeks including a call or meeting, if necessary.**
- **Presentation of the modified proposal to the FCC for its review and approval prior to petitioning the FCC to move the tariff.**
- **After joint meeting with FCC, SMS/800, Inc. to send letter to all Resp Orgs and SCP O/O Primary Contacts regarding the transition proposal and need for executive contact and affiliate information.**
- **BOCs to petition the FCC to transfer the tariff to SMS/800, Inc.**
- **Board election to take place promptly following movement of the tariff to SMS/800, Inc.**



# Thank you

***If you have questions or feedback please feel free to contact the members of the SMS/800, Inc. Board of Directors via email at [SMS800Board@SMS800Inc.com](mailto:SMS800Board@SMS800Inc.com) and/or SMS/800, Inc. CEO Tom FitzGerald at [Tom.FitzGerald@sms800inc.com](mailto:Tom.FitzGerald@sms800inc.com).***